



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

March 18, 1957

Hon. Robert S. Calvert  
State Comptroller  
Austin, Texas

Hon. Jesse James  
State Treasurer  
Austin, Texas

Opinion No. WW-69

Re: Constitutionality of  
proposed procedure for  
investment of Permanent  
University Funds under  
Art. VII, Section 11(a)

Gentlemen:

Your joint request for an opinion of this office presents the following questions:

1. Is the proposed procedure for the purchase and sale of corporate securities for and on behalf of the Permanent University Fund in compliance with Article VII, Section 11(a) of the Constitution?
2. From what fund are the documentary stamp taxes, transfer taxes and fees, and commissions payable?

A prior opinion of this office, Attorney General Opinion MS-263 (1956), held that the Board of Regents of the University of Texas is not authorized to pledge or lend the credit of the State, and the addition of Article VII, Section 11(a) to our Constitution does not grant such authority. In that opinion this office held that the University, rather than lend the credit of the State, must employ the customary business practices whereby the title to securities will pass to the purchaser prior to the time physical possession is acquired.

The proposed steps outlined in your letter (attached to this opinion as Appendix A) are based upon the rationale outlined in our prior opinion. We have carefully examined the proposed procedure and find that it will not result in

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the lending of the credit of the State and that it will comply with the requirements of Article VII, Section 11(a) of the Constitution. Your first question is answered in the affirmative.

Your second question relates to the proper treatment of documentary stamp taxes, transfer taxes and fees and commissions as expenses in connection with the acquisition of the securities. These items of expense must be distinguished from premiums, discounts, accrued interest, investment counsel fees and administrative expenses which are not considered by this opinion.

In Attorney General Opinion MS-263 (1956), consideration was given to the general effect of the new constitutional provision, and it was there stated:

"A consideration of the provisions of Article 7, Sections 10, 11, 11(a), 12 and 15 of the Constitution of Texas, shows quite clearly that the only change in our Constitution affected by the adoption of Article 7, Section 11(a) was to increase the permissive investments of the Permanent University Fund. The sole purpose of the endowment or non-expendable fund is to produce revenue to maintain the institution endowed, and the new provision of the Constitution is merely to aid in the procurement of that objective by the broadening of the investment portfolio."

We hold to the view therein expressed; no basic change has been made in the time-honored distinction and separation between the Available and Permanent University Funds, the only question being which fund should pay such expenses of acquiring the securities under Article VII, Section 11(a) of the Constitution.

Article VII, Section 11 of the Constitution still requires that the Permanent University Fund be retained in the Treasury of the State. Article VII, Section 11(a), by its own terms, is self-enacting and the absolutely essential powers to carry the program into effect are necessarily conferred upon the Board of Regents by implication. The

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payment of such required commissions, fees and taxes, before the delivery of the securities to the Permanent University Fund at the State Treasury, are costs of acquiring the securities and must be paid from the permanent University Fund. This is the ordinary and customary business and accounting practice and the constitutional provision infers that the customary business procedures will be followed.

#### SUMMARY

The procedure for the purchase of corporate securities submitted (attached as Appendix A) complied with Article VII, Section 11(a) of the Constitution of Texas, and does not lend the credit of the State. Applicable documentary stamp taxes, transfer taxes and fees, and commissions required to be paid to effect delivery of securities purchased under Article VII, Section 11(a) are costs of acquisition and payable from the Permanent University Fund.

Very truly yours,

WILL WILSON  
Attorney General

By *Elbert M. Morrow*  
Elbert M. Morrow  
Assistant

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APPROVED:

OPINION COMMITTEE

By: H. Grady Chandler, Chairman

## APPENDIX "A"

### PROPOSED PROCEDURE IN CONNECTION WITH PAYMENT FOR AND DELIVERY OF CORPORATE SECURITIES PURCHASED AND SOLD FOR THE PERMANENT UNIVERSITY FUND

#### - Purchase of Stocks -

#### A. Payment:

1. Endowment Office to place order for purchase of stock; broker to purchase stock as instructed; payment to be made to broker on fourth business day following day on which stock is purchased. (Saturday is not a business day for broker.)
2. Broker to confirm purchase with telegram to Endowment Officer on day of purchase, the telegram to report price and total extensions.
3. Endowment Office to prepare voucher and supporting letters on day of purchase and turn over to University Auditor for processing, confirming telegram to be attached until invoices can be received from broker.
4. On day of purchase, broker to air mail to Endowment Officer an invoice in triplicate with notarized affidavit attached to original; invoice to arrive not later than second business day following purchase.
5. On third business day following purchase, Auditor's Office to process voucher at State Comptroller's and State Treasurer's Offices.
6. State warrant to be issued payable to local bank for account of broker; warrant to be turned over to local bank on third business day; bank to give receipt for warrant; bank to exchange warrant at State Treasurer's Office on third business day for bank draft (probably on Dallas bank); local bank to wire funds to broker on fourth business day to constitute required payment. (In this connection, it will be necessary for each broker who is paid through a local bank to give the bank a power of attorney authorizing bank to endorse State warrant and exchange for a bank draft.)

#### B. Registration of Stock Certificates, Delivery of Stock Certificates and Subsequent Delivery of Stock Dividends:

1. In payment letter prepared by Endowment Office, stock transfer agent to be advised to have the registration and delivery of stock certificates and the subsequent mailing address for dividends, reports, etc., as

Permanent University Fund of The University of Texas  
Austin 12, Texas  
Care of Endowment Officer

2. Upon receipt of registered stock certificates (usually by registered mail) by Endowment Officer, certificates received to be checked for proper registration, number of shares, etc.
3. Endowment Officer to prepare deposit warrant request addressed to State Comptroller and to turn over stock certificates with deposit warrant request to University Auditor. Auditor to set up proper purchase record on his card system files.
4. Auditor to deliver registered stock certificates to State Treasurer on the following day after receipt from Endowment Officer. The State Treasurer to check correctness and give the University Auditor a receipt for the stock certificates. (This receipt could be effected by having the State Treasurer's authorized representative countersign the copy of the deposit warrant request designated for the University Auditor. The Auditor would in turn conform the copy designated for the Endowment Office.)
5. Upon receipt of cash dividends in the form of checks by Endowment Office, Endowment Office to check for correctness according to dividends declared by company, to post to Endowment Office records, and to turn over dividend checks to University Auditor, after endorsement on behalf of the University by the Endowment Officer or the Assistant to the Endowment Officer.
6. Auditor to post dividends to proper card records in Auditor's Office and to follow routine procedure as currently followed in turning over interest checks on Government Bonds to State Treasurer. The schedule used by Auditor would be revised for dividend payments since amortization will not be involved.
7. Stock dividend certificates received by Endowment Office to be checked and processed in the same manner as the handling of stock certificates received as a result of a purchase.

C. Stock Splits and Stock Rights:

1. Certificates for stock splits to be received by Endowment Office and processed as are certificates for a stock purchase. In some instances, it might be required that old certificates would have to be sent in and new certificates forwarded in lieu thereof; but current practice is for the holder to retain old certificates and to receive enough new certificates to effect split with stickers furnished, indicating the change in par value, to be placed on old stock certificates.

2. Subscription warrants for stock rights to be received by Endowment Office. Endowment Office to prepare voucher for purchase of stock authorized (exercise of stock rights), including any necessary purchase of rights to round out for purchase of full share of stock. Photo-static copies of subscription warrant are to be attached to each copy of voucher as supporting data.

The subscription warrant to be signed on behalf of The Permanent University Fund of The University of Texas by both the Endowment Officer (or the Assistant to the Endowment Officer) and the State Treasurer (or the Acting State Treasurer).

Subscription warrant and State warrant to be turned over by University Auditor to local broker for exercise of all stock rights. Local broker to effect exercise of rights and have certificates for stock registered and mailed as indicated in B. 1. Endowment Office to handle stock certificates in the same manner as the handling outlined for other purchases of stock.

- Purchase of Corporate Bonds -

A. Payment, Delivery and Interest Payments:

1. For corporate bonds already on market (secondary market) --
  - a. Endowment Office to place order for purchase of corporate bonds; broker to purchase bonds as instructed; payment to be made on fourth business day following day on which bonds are purchased, with accrued interest to be paid to fourth business day; payment to be effected through local bank as outlined in A. 6.
  - b. Delivery of bonds to be made by broker through a local bank direct to State Treasurer. Upon advice from State Treasurer that bonds are in hand (letter to be written by State Treasurer's representative to Endowment Office with copy to Auditor, giving numbers and denominations of bonds and stating coupons attached), Endowment Office to prepare deposit warrant request in same manner as currently is followed for municipal bonds purchased for the Permanent University Fund.
2. For corporate bonds on original issue --
  - a. Endowment Office to place order for purchase of part of bonds of an original issue of corporate bonds.
  - b. Payment and delivery to be effected in same manner as purchase of initial issue of municipal bonds for the Permanent University Fund, with accrued interest to be paid to date of payment and delivery through local bank when new issue is ready for delivery.

3. Interest Payments --  
Same procedure to be followed as currently is being followed by University Auditor for municipal bonds. Auditor to prepare coupon clipping and amortization schedule and turn over to State Treasurer; State Treasurer to send coupons through for collection.

- Sale of Securities -

A. Delivery of Security to Broker:

1. It will be necessary when a sale order is placed with a broker to get the actual security from the State Treasurer and deliver it to the broker at the time the order is placed to sell.
  - a. If registered stock or bond, assignment in blank will be signed by the Endowment Officer or the Assistant to the Endowment Officer and by the State Treasurer or the Acting State Treasurer, with signatures guaranteed by bank or member of New York Stock Exchange.
  - b. For security reasons, sales (which will be infrequent) will be handled through a local broker.
  - c. Endowment Office to prepare sale order letter to broker, copy being made for State Treasurer, State Comptroller, and University Auditor. Endowment Office to prepare letter to State Comptroller requesting that he authorize the State Treasurer to withdraw securities to be sold and to deliver upon receipt to local broker. Attached to the request to State Comptroller will be a certified copy of Minutes of the Board of Regents authorizing sale of the specific securities.
  - d. State Treasurer to withdraw securities upon authorization by the State Comptroller. University Auditor and representative of local broker to meet at State Treasurer's Office to effect delivery of the securities, the Auditor processing the request for withdrawal through Comptroller to Treasurer. Broker to give receipt for securities to State Treasurer. University Auditor to conform copies of receipt for Auditor's files and Endowment Office's files.
  - e. Broker to sell security as instructed and confirm to Endowment Office.
  - f. Endowment Office to prepare invoice to broker, copies being made for State Comptroller, State Treasurer, and University Auditor. Invoice presented to broker who will pay net amount due on fourth business day by check turned over to Endowment Officer.
  - g. Endowment Office to check extensions on sale and turn over sale check and schedule to State Treasurer, copy of schedule being made for State Comptroller and Endowment Office.